

DW 06-016

HAMPSTEAD AREA WATER COMPANY, INC.

**Petition to Expand Franchise, Drill/Operate Well, Financing, Acquisition of Assets and
Permanent Rates**

Order *Nisi* Approving Franchise Expansion and Financing

ORDER NO. 24,608

March 24, 2006

I. BACKGROUND

On January 17, 2006, HAWC filed with the New Hampshire Public Utilities Commission (Commission) a petition relative to a new water system intended to serve the Autumn Hills Elderly Housing Community (Autumn Hills) located off Odell Road in the Town of Sandown, New Hampshire. Hampstead Area Water Company, Inc. (HAWC) is a New Hampshire public utility as defined by RSA 362:2 and 362:4 and currently serves approximately 2,500 customers in various communities throughout southeastern New Hampshire. In its petition, HAWC seeks authority to: 1) expand its franchise area within the Town of Sandown; 2) construct and operate two wells inside that area; 3) purchase the assets of the water system serving the Autumn Hills development; 4) issue long-term debt in order to finance the acquisition of the water system assets; and 5) charge permanent rates to the customers served by the Autumn Hills water system. In support of its petition, HAWC submitted copies of agreements and schedules, as well as the pre-filed testimony of Peter A. Lewis, President of HAWC; John Sullivan, controller for HAWC; and Oliver Poirier, P.E. of HAWC.

Autumn Hills is a subdivision which will contain 24 single-family dwelling units to be supplied by two bedrock wells. Autumn Hills is located within a portion of Sandown that

is currently not in HAWC's approved franchise area.¹ The owner and developer of Autumn Hills is Aquarius Properties, LLC (Aquarius). Lewis Builders Development, Inc. (LBDI), an affiliate of HAWC, will construct the water system.

HAWC filed with its petition an executed water rights and easement deed between Aquarius and HAWC dated May 4, 2005. Subsequent to HAWC's filing, Aquarius withdrew a certain parcel of property from the development. On February 16, 2006, HAWC executed a Partial Release of Water Rights and Easement relative to the withdrawn parcel.

Aquarius, LBDI and HAWC contracted to complete the project in two phases, thus two three-party contracts were executed. The first was signed on May 4, 2005, and pertained to the preliminary design, well sitings and the procurement of New Hampshire Department of Environmental (NH DES) approvals. Upon the completion of this initial phase, a second contract was executed on October 17, 2005, relative to the actual construction of the water system. The system assets to be constructed include two wells, a pumping and treatment station with appurtenances required by the system, transmission and distribution mains, services and meters. Pursuant to the petition, the purchase price of the system assets (excluding meters) to be acquired by HAWC from Aquarius is determined by multiplying the number of residential units, 24, by \$1,000 per service connection within the Autumn Hills system, for a total of \$24,000. HAWC will also acquire 24 meters from LBDI at a cost of \$325 per meter, or \$7,800. Thus, the combined purchase price of the system assets will be \$31,800. According to the filing, the contractors' cost to build the water system is estimated at \$289,277. HAWC plans to treat

¹ The proposed franchise area described in HAWC's revised Exhibit 3 is a parcel of land identified as the Town of Sandown Tax Map 12 Lot 3.

the \$257,477 difference between the \$289,277 construction cost and the \$31,800 purchase price as Contributions in Aid of Construction (CIAC).

HAWC seeks to finance the \$31,800 total purchase price for the Autumn Hills water system assets through two notes payable. The first promises to pay Aquarius the sum of \$24,000 over 240 equal installments at an interest rate equal to 2.25% above the Prime Rate published in the *Wall Street Journal* on the last business day of the quarter preceding Commission approval, to be adjusted every three years thereafter. The second note promises to pay LBDI the sum of \$7,800 under terms that are identical to those found in the proposed note with Aquarius.

HAWC's petition states that the Autumn Hills water system was included in its filing for a general rate increase in Docket No. DW 05-112. Further, HAWC states that if a decision is not rendered in Docket No. DW 05-112 prior to the conclusion of the instant docket, it requests authority to charge Autumn Hills' customers a base rate of \$100 per year and a consumption rate of \$10.57 per 100 cubic feet. HAWC provided testimony and schedules in support of these proposed rates.

On November 9, 2005, the Commission received correspondence from the Sandown Board of Selectmen indicating it had received notification of the proposed petition regarding the Autumn Hills water system. No subsequent correspondence has been received from the Sandown Board of Selectmen relative to this docket.

On March 23, 2006, Staff submitted a letter to the Commission in support of HAWC's franchise approval request for the Autumn Hills water system. Staff stated that while it had reviewed HAWC's filing and conducted certain discovery, an audit of the Continuing Property Records (CPRs) for Autumn Hills was not performed because construction of the water

system had not yet been completed. Staff, therefore, recommended that Commission approval of HAWC's petition should be subject to review of the CPRs by the Commission Audit Staff within 60 days of final completion of construction of the water system. Staff concurred with HAWC's request that \$31,800 be allowed as rate base and that \$257,477 of the estimated construction cost of \$289,277 be treated as CIAC, subject to confirmation by the Commission's Audit Staff. Staff also recommended that HAWC's total financing request in the amount of \$31,800 be approved and estimated that the initial interest rate of these financings would be 9.50%, given the *Wall Street Journal* Prime Rate as of December 31, 2005. With regard to HAWC's permanent rate request, Staff recommended that, in the interest of administrative efficiency, the Commission defer approval of that portion of HAWC's petition until it renders a decision in HAWC's concurrent general rate case docket, Docket No. DW 05-112, which is presently scheduled for hearing on May 2, 2006.

II. COMMISSION ANALYSIS

Pursuant to RSA 374:22, "[n]o person or business entity shall commence business as a public utility within this state...without first having obtained the permission and approval of the commission." The Commission shall grant requests for franchise authority and allow an entity to engage in the business of a public utility when it finds, after due hearing, that the exercise of the right, privilege, or franchise is in the public good. RSA 374:26. In determining whether a franchise is in the public good, the Commission assesses the managerial, technical, and financial expertise of the petitioner. *See, Lower Bartlett Water Precinct*, 85 NH PUC 635, 641 (2000).

HAWC and its predecessor, Walnut Ridge, have been operating water systems in southern New Hampshire for approximately 40 years. *See, Walnut Ridge Water Company, Inc.*,

62 NH PUC 190 (1977). HAWC has previously demonstrated the requisite managerial, technical, and financial to operate its many other water systems. Accordingly, we find HAWC possesses the requisite managerial, technical, and financial expertise to operate the Autumn Hills water system.

Pursuant to RSA 374:22, III, water companies seeking franchise approval must also satisfy the requirements of DES relating to suitability and availability of water. We note the filing contains documentation of DES approvals which we believe substantiate that HAWC complies with RSA 374:22, III.

Pursuant to the provisions of RSA 369:1, public utilities engaged in business in this State may issue evidences of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be “consistent with the public good.” Analysis of the public good consideration involves looking beyond actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates to insure that the public good is protected. *Appeal of Easton*, 125 N.H. 205, 213 (1984). In the instant matter, HAWC intends to purchase the Autumn Hills water system assets from Aquarius and LBDI. Pursuant to HAWC’s petition, the purchase price is determined as the product of 24 customers times \$1,000 per service connection, or \$24,000, plus the cost of 24 meters, or \$7,800, resulting in a total purchase price of \$31,800. This is the amount HAWC proposes to finance. We note that this amount is substantially lower than the estimated cost of construction, which is \$289,277.

As indicated earlier, the difference between the actual cost of construction and the purchase price, or \$257,477, is being treated as CIAC. We previously found HAWC’s methodology for determining CIAC in Docket No. DW 02-128 to be consistent with the public interest and Staff has indicated that the determination of CIAC in the instant proceeding was

consistent with Order No. 24,362. Based on the record before us, we agree with Staff and believe the CIAC determination in the instant docket accurately follows the guidelines established in Order No. 24,362 in Docket No. DW 02-128. We agree as well with Staff's recommendation regarding an audit of HAWC's CPRs for the Autumn Hills system once the system is complete and final construction costs are known. Such an examination would ensure that HAWC's plant accounting is accurate and in compliance with the Uniform System of Accounts for Water Utilities. For the foregoing reasons, we find that HAWC's purchase of the utility assets in Autumn Hills is consistent with the public good.

We next review the reasonableness of the proposed interest rate and its impact upon ratepayers. According to the Petition, the interest will be calculated based on the prime rate published in the *Wall Street Journal* on the last business day of the calendar quarter preceding Commission approval in this case, plus a margin of 2.25%. We have, in the past, approved interest rates for small water companies where the margin has ranged from 1.5 to 2.75% over the index.² In Docket No. DW 02-198, we approved an interest rate for a HAWC loan with Lewis Builders that was 2.25% above prime. *Hampstead Area Water Company, Inc.*, Order No. 24,296 (March 19, 2004). Based on our review of the record and discussion above, we agree that a 9.50% interest rate on the two proposed loans for \$24,000 and \$7,800 is reasonable. For these reasons, we find that the financing proposed by HAWC is reasonable.

New Hampshire RSA 378:7 authorizes the Commission to fix rates pursuant to an order after a hearing. The Commission is obligated to investigate whether the proposed rates are just and reasonable and balance the consumers' interest in paying no higher rates than are

² *Lakes Region Water Company, Inc.*, 89 NH PUC 652 (2004), 3% over FHLBB; *Tilton-Northfield Aqueduct Company*, 88 NH PUC 231 (2003), 2.75% over FHLBB; *West Swanzey Water Company*, 88 NH PUC 412 (2003), 1.5% over prime.

required with the investor's interest in obtaining a reasonable return on investment. *See, Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). Traditional rate-of-return principles permit a utility to recover prudently incurred operating expenses along with "the opportunity to make a profit on its investment, in an amount equal to its rate base multiplied by a specified rate of return." *See, Appeal of Conservation Law Foundation*, 127 N.H. 606, 634 (1986). We apply these principles to the analysis of the rates proposed by HAWC.

HAWC's petition states, and Staff concurs, that the Autumn Hills water system was included in the general rate case filing docketed as Docket No. DW 05-112. HAWC's petition also states that if a decision is not rendered in Docket No. DW 05-112 prior to the conclusion of the instant docket, it requests authority to charge Autumn Hills' customers a base rate of \$100 per year and a consumption rate of \$10.57 per 100 cubic feet. From the record before us, it is clear that the Autumn Hills system will be included in the determination of rates in Docket No. DW 05-112. The record also indicates that completion of construction of the Autumn Hills water system as well as the subsequent provision of water to the customers of that system will occur sometime after a decision is rendered in Docket No. DW 05-112 which is presently scheduled for hearing on May 2, 2006. Thus, deferring a decision on permanent rates for Autumn Hills at this time will not have an adverse impact HAWC's ability to earn revenue from this system. Based on these findings, we agree with Staff's recommendation that, in the interest of administrative efficiency, we will defer approval of permanent rates for the Autumn Hills franchise until we render a decision in Docket No. DW 05-112.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Hampstead Area Water Company, Inc. is authorized to operate as a public water utility in a limited area known as

the Autumn Hills Elderly Housing Community located in the Town of Sandown, New Hampshire; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc.'s request to finance the purchase of the Autumn Hills water system assets from Aquarius Properties, LLC and Lewis Builders Development, Inc. under the terms and conditions stated in Hampstead Area Water Company, Inc.'s petition, is approved; and it is

FURTHER ORDERED, that within 60 days from the date of completion of construction of the Autumn Hills water system, Hampstead Area Water Company, Inc. shall make available for review by the Commission Audit Staff the Continuing Property Records pertaining to the Autumn Hills water system assets; and it is

FURTHER ORDERED, that Hampstead Area Water Company, Inc. shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than April 3, 2006 and to be documented by affidavit filed with this office on or before April 24, 2006; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than April 10, 2006 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 17, 2006; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 24, 2006, unless Hampstead Area Water Company, Inc. fails to satisfy the publication obligation set forth

above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary